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Attorneys for Defendants
WELLS FARGO BANK, N.A. and
WELLS FARGO FUNDS MANAGEMENT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PHOENIX SOLUTIONS, INC., a California
corporation,

Plaintiff,

v.

WELLS FARGO BANK, N.A., a Delaware
corporation, and WELLS FARGO FUNDS
MANAGEMENT, LLC, a Delaware limited
liability company,

Defendant.

Case No. CV 08-0863 MHP

**STIPULATION AND [PROPOSED]
ORDER PURSUANT TO LOCAL RULE
7-7 REGARDING DATE OF HEARING
ON PHOENIX'S MOTION TO STRIKE
AND/OR DISMISS AFFIRMATIVE
DEFENSES OF INEQUITABLE
CONDUCT**

1 Pursuant to Local Rule 7-7, undersigned counsel for Phoenix Solutions, Inc. (“Phoenix”)
2 and Wells Fargo Bank, N.A. and Wells Fargo Funds Management, LLC (collectively, “Wells
3 Fargo”) jointly and respectfully submit this stipulation regarding the date of the hearing on
4 Phoenix’s motion to strike and/or dismiss Wells Fargo’s affirmative defenses of inequitable
5 conduct.

6 1. On October 21, 2008, Phoenix filed a motion to strike and/or dismiss Wells
7 Fargo’s affirmative defenses of inequitable conduct (Docket No. 104), noticing that motion for
8 December 1, 2008.

9 2. On October 30, 2008, the parties filed a stipulation and proposed order seeking to
10 reschedule their motions for summary judgment (which had been rescheduled from November
11 10, 2008 to November 24, 2008, *see* Docket No. 111) for December 1, 2008, the date for which
12 Phoenix’s motion to strike and/or dismiss affirmative defenses had been noticed. *See* Docket
13 No. 115.

14 3. On November 18, 2008, the Court issued an Order rescheduling the hearing on
15 the parties’ motions for summary judgment (Docket Nos. 43 and 51) to January 5, 2009 at 2:00
16 p.m. *See* Docket No. 151.

17 4. The issues involved in the motions at Docket No. 104 and Docket No. 43 are
18 similar, and the parties are currently discussing the possibility of a stipulation that would resolve
19 the issues in both Docket No. 104 and Docket No. 43, obviating the need for any hearing on
20 those motions.

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1 5. Accordingly, to prevent the need for a multiplicity of hearings in the case, counsel
2 for Phoenix and counsel for Wells Fargo therefore stipulate to, and respectfully request, an Order
3 rescheduling the hearing on Phoenix's motion to strike and/or dismiss for January 5, 2009 at 2:00
4 p.m.

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6 Dated: November 19, 2008

TROJAN LAW OFFICES

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9 By: /s/ R. Joseph Trojan
10 R. Joseph Trojan
Attorneys for Plaintiff
PHOENIX SOLUTIONS, INC.

11 Dated: November 19, 2008

KEKER & VAN NEST, LLP

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14 By: /s/ Eugene M. Paige
15 Eugene M. Paige
Attorneys for Defendant
WELLS FARGO BANK, N.A.

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18 **~~[PROPOSED]~~ ORDER**

19 Upon the joint stipulation of the parties, the request to reschedule the hearing on
20 Phoenix's motion to strike and/or to dismiss affirmative defenses (Docket No. 104) to January 5,
21 2009, at 2:00 p.m. is GRANTED. and motion to strike declaration of Bennett
(docket No. 100)

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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24 Dated: 11/21/2008

